TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 616.

JOHN HILL, Jr., REUBEN G. CHANDLER, ADOLPH KEMPNER, ET AL., APPELLANTS,

vs.

HENRY C. WALLACE, SECRETARY OF AGRICULTURE; DAVID H. BLAIR, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER [illegible], 1921.

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INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., November 21, 1921.

I Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, Begun and Held at the United States Court Room, in the City of Chicago, in said District and Division, Before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on Monday, the Seventh Day of November, in the Year of Our Lord One Thousand Nine Hundred and 21, Being One of the Days of the Regular November Term of Said Court, Begun Monday, the Seventh Day of November, and of Our Independence the 146th Year.

Present:

Honorable Kenesaw M. Landis, District Judge.
John J. Bradley, U. S. Marshal.
John H. R. Jamar, Clerk.

II In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 2400.

John Hill, Jr., et al., Plaintiffs,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Be it remembered that heretofore, to-wit: on the 25th day of October, 1921, came the above named complainants, by their solicitors, and filed their bill of complaint, as follows:

1 Filed Oct. 25, 1921. John H. R. Jamar, Clerk.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

2400.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Bill Attacking the Constitutionality of the Future Trading Act.

Robbins, Townley & Wild,
Solicitors for Complainants.
Henry S. Robbins,
Counsel.

1a In the District Court of the United States, Northern District of Illinois, Eastern Division.

2400.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Bill Attacking the Constitutionality of the Future Trading Act.

To the Honorable the Judges of said Court, in Chancery Sitting:

Your orators, John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Charles E. Gifford, Alfred V. Booth, Edward L. Glaser, and Alonzo B. Lord, bring this, their bill of complaint in their own behalf (and in behalf of all other members of the Board of Trade of the City of Chicago, who may wish to join therein or share in the relief granted herein), against Henry C. Wallace, Secretary of Agriculture; David H. Blair, Commissioner of Internal Revenue of the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District of Illinois; Board of Trade of the City of Chicago, Joseph P. Griffin,
2 president and a director of said Board of Trade, and James J. Fones and Theodore E. Cunningham, vice-presidents and directors of said Board of Trade, and Louis C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis and James C. Murray, directors of said Board of Trade, and John R. Mauff, secretary of said Board of Trade, and allege:

1. That the Board of Trade of the City of Chicago (hereinafter called the Board) is a corporation organized under a special charter granted by the State of Illinois, February 18, 1859, by which certain persons before that date residing in the City of Chicago and engaged there in the purchase and sale of grain were created a corporation, and were given power to admit such persons as members and expel such members as said corporation might see fit, and also power to adopt and maintain such rules, regulations and by-laws as said corporation might think proper for the government of said corporation and for the management of the business of its members and the mode in which it should be transacted; and said corporation was also authorized to appoint committees of arbitration for the settlement of such matters of difference as might be submitted by members of said Board or others; and said charter also provided that any award in such arbitration, when filed in any Circuit Court of said state, should have the force and effect of a judgment, upon which

an execution might issue as upon other judgments; and by said charter said corporation was also given power to appoint such persons as they may see fit to examine, measure, weigh, gauge, or inspect flour, grain and other articles of produce or traffic
3 commonly dealt in by the members of said corporation, and the certificate of such appointee as to quality or quantity of any such article, or its brand or mark was made evidence between any buyer and seller assenting to the employment of such appointee; and said corporation was also given power to do or carry on any business that is usual in the management of boards of trade or chambers of commerce, a copy of which charter is hereto attached and made a part hereof as Exhibit "A."

2. That upon the granting of said charter said grantees of said charter adopted and declared the objects of said Board to be:

"To maintain a Commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; and, generally, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits,"

and to accomplish these objects the members of said Board adopted, and for many years maintained, and now have, certain regulations governing the inspection of flour, grain provisions, hay, the cutting and packing of hog products, the grading and inspection of flaxseed, the regulation of grain warehouses, whose receipts shall be made regular for delivery on grain contracts, the sampling of grain, the storage of provisions, the management of a clearing house maintained by said Board for the convenience of its members, the weighing of grain, the maintenance of a Custodian Department respecting commodities dealt in, the distribution of market records and reports, and other like matters. And the Board has also, for many years adopted and maintained, and now maintains, a set of rules which provide for the admission and expulsion of members and govern the relations of its said members to said Board and to
4 each other, and also the manner in which the business of its members should be transacted, which rules also vest (subject to said rules) the government of said Board and the management of its business and financial concerns in a board of eighteen directors, one of whom shall be president and two of whom shall be vice-presidents of said Board, (the individuals above named being at present its officers and directors); and said rules further provide that said board of directors should annually assess against each of it members an amount, which in the aggregate should be sufficient to meet all the expenditures of said Board. And certain of its said rules which are material in this controversy are set out in Exhibit "B" attached to this bill and made a part thereof.

3. That among the rules so adopted and now in force are some providing that, whenever any member should default on a business

contract or on the payment of any award made in any arbitration, or should be guilty of certain other misconduct, he should be suspended by the board of directors from all the privileges of membership, and that in case any member shall be guilty of certain other graver offenses, such as bad faith, or an attempt at extortion or other dishonest conduct, he shall be expelled from the Board; but that before any such suspension or expulsion written charges shall be filed with the board of directors specifying the offense charged, of which the member shall have notice and a hearing before such suspension or expulsion; and that one of said rules (see Section 1, Rule X in Exhibit B) provides that any male person of good character and credit may be admitted to membership by the board of directors upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-laws of the
5 Association, and all amendments that may be made thereto, which agreement is signed by all members and reads as follows:

"We, the undersigned members of the Board of Trade of the City of Chicago, do, by our respective signatures and by virtue of our membership in said corporation, hereby mutually agree and covenant with each other and with the said corporation, that we will, in our actions and dealings with each other and with the said corporation, be in all respects governed by and respect the rules, regulations and by-laws of the said corporation as they now exist, or as they may be hereafter modified, altered or amended."

That said Board does not admit, and never has admitted, to membership any corporation; but one of its said rules provides that, if any two members of said Board are executive officers and bona fide and substantial stockholders of any corporation, it may become a party to any trade or contract made by it in any of the commodities bought and sold on the exchange of said Board, but that in that event said two members shall be subject to be disciplined for any default in the execution of any such trade or contract of said corporation in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own; and that said Board now has 1,610 members, and that all of your orators are members in good standing of said Board.

4. That yearly since 1859 said Board has levied an assessment upon all its members sufficient, with the moneys received from its other incidental sources of revenue, to meet all its ordinary expenses and with the surplus of its said revenue it has acquired, and now owns, in fee real estate in the business district of Chicago, upon which it has constructed a large building,
6 which provides it with an exchange room and offices and also surplus space, from which said Board derives a substantial rental; and that the fair market value of such real estate and building, over and above a mortgage thereon, exceeds $2,000,000,

and that said Board now raises each year by assessments upon its members as aforesaid, more than $240,000 for the purpose of maintaining said building and its said exchange.

5. That the Board does not enter, and never has entered, into any commercial transactions of any kind whatever for profit, nor does it pay, or seek to pay, any dividends to its members; that its chief purpose and function is to provide an exchange room where its members may meet daily between certain market hours and make with each other contracts for the purchase and sale of grain and other products of the farm, and also to prescribe, and enforce, rules respecting the terms of such contracts and to enforce, by disciplinary proceedings when necessary, compliance by its members with their said contracts, and for the settlement of disputes arising between its members out of their trades, and about the only other function of said Board is to determine, who are fit persons, as respect character and financial responsibility, to be and remain its members.

That as its main source of revenue is, and always has been, the annual dues paid by its members, it is incumbent upon the said Board to make it profitable for persons to become and remain members and pay such yearly assessments; and that, in order to render its disciplinary power over its members sufficiently effective to maintain a high character for business probity among its members, it is also necessary for said Board, not only to make it profitable for members to remain such, but also to give a substantial salable value to such memberships; and that said Board seeks to accomplish and accomplishes this by

7 (1) limiting the number of its members as aforesaid;

(2) providing that only members may make transactions in its exchange room;

(3) prescribing, and compelling all its members to conform to, certain fixed reasonable minimum rates of commission, which members, when acting as agents, must charge their principals for making transactions on said exchange;

and that for this purpose said Board has for many years maintained (as do all commercial exchanges), and still maintains and enforces, a rule prescribing the minimum rates of commission (which are reasonable) as respects each of the different kinds of transactions, each member is required to charge, whenever acting for a principal in any transaction upon its exchange, but the rate to members is lower than the rate to non-members, and that one of the essential features of this rule is the following provision:

"Rule XIV. * * * F. Any member who, or whose firm or corporation, shall be convicted by the Board of Directors of a violation of the provisions of this rule, or of any evasion thereof by making rebates in prices, by making any contract or observing any contract already made, by furnishing a membership in this Ex-

change, by giving any bonus, gift, donation, or otherwise, or shall purchase or offer to purchase any grain, seeds, provisions or other commodities consigned to him, them, or it, for sale, or by rendering any other service or concession whatsoever, with the intent to evade in any way directly or indirectly the regular rates of commission or brokerage established by this rule, shall be expelled from this Association."

That the provision for the expulsion of any member violating its said commission rule was first inserted in said rule about the year 1900 and that before such insertion the salable value of its memberships did not exceed $800, and that since such amend-
8 ment and its strict enforcement by said Board, memberships have been sold to persons desiring to become members for as much as $11,000 and are now saleable for more than $7,000.

6. That in recent years there have been organized in most of the grain-producing states many so-called farmers' co-operative societies, associations or corporations and farmers' co-operative elevator companies, with the avowed purpose of enabling such farmers as should become members thereof to market their crops at actual cost, and, if possible, to market their crops through the exchanges at actual cost, and without paying the commissions charged by members of such exchange, the method contemplated to attain this being to make one of the salaried officers of said co-operative organization a member of the exchange, and through him to sell all the grain produced by members of the co-operative association—he temporarily charging the prescribed commissions—and ultimately rebating back to the members of such organization the aggregate of such commissions (after paying his salary and incidental expense) on the basis of the number of bushels of grain each producer has sold through said organization—such rebates being popularly called "Patronage dividends;" and that at least one of the states (Nebraska) has passed a statute providing that cooperative organizations may be organized with the power to distribute their earnings to their members upon the basis of, or in the proportion to the quantity of grain which each member has sold through said co-operative organization; and that on April 18, 1921, there was organized under the laws of Delaware a corporation known as "U. S. Grain Growers, Inc.," membership in which is limited to producers of grain; and the promoters of said corporation publicly state the general purpose of said corporation is the creation of a non-stock, non-profit agricultural organization,
9 which can market at cost grain produced by its members, and which extends the so-called farmers' co-operative movement farther than co-operative methods have thus far gone.

That the by-laws of such corporation provide for the organization of subsidiary corporations for the carrying out of said purposes, and that the operation of said corporation shall consist of the marketing of the grain of its members, by virtue of contracts with state-wide or interstate growers' associations, farmers' co-operative elevator companies or with local co-operative associations; and that said U. S. Grain Growers, Inc., are tendering large numbers of producers

of grain throughout the United States a contract between the individual producer and his local co-operative company, and is also seeking the execution by all local co-operative elevator companies of contracts with said U. S. Grain Growers, Inc., the purpose and object sought to be accomplished through said two contracts being that the grain of all growers of grain who sign such contracts with any local elevator company shall, through the co-operation of said local elevator company and said U. S. Grain Growers, Inc., be sold at actual cost, and without the payment of any commissions to members of any of the grain exchanges of the country; and your orators are informed and believe that very many producers and co-operative elevator companies have already signed and delivered to said U. S. Grain Growers, Inc., such contracts, copies of which two contracts are annexed to this bill and made a part thereof as Exhibit "C."

That heretofore members of said co-operative associations have sought to become members of said Board, but said Board has refused to admit any such persons to membership, for the reason that the avowed purpose of such applicants has been to re-
10 bate back to the members of their organization the aggregate amount of their commissions, less their salary and expenses, and that this would violate and break down said commission rule of said Board, and would ultimately destroy the business of its members, which consist in the receiving of grain by consignment for sale on commission, the ultimate effect of which would be to much impair, if not destroy, the value of the memberships of said Board, and make it difficult for said Board to maintain sufficient members who would be willing to pay assessments to meet the expenses of maintaining its said exchange.

7. That the members of said Board engage only in the following different kinds of trading in grain:

(1) Many of them, including some of your orators, act as commission merchants and receive from producers and country grain dealers grain in cars and boats consigned to them, which, as agents, they sell for immediate delivery, and they account to their principals for the proceeds of such sales less their commissions and other expenses; and many of said members, including some of your orators, acting either as agents or principals, purchase and sell grain in Chicago, which is in cars or elevators, for immediate delivery, all of such transactions being popularly known as "cash" trades.

(2) Many members of said Board, including some of your orators, send out in the afternoons, whenever the market conditions are favorable, telegrams and letters to country grain dealers and others non-resident in Chicago, offering to buy grain at a certain named price and to be shipped within a certain named time, if the offer shall be accepted by telegram received by the offering member before the opening of the Board's exchange next morning, such transaction being known to the trade as "contracts to arrive" or "cash sales

for deferred shipment"; many members, including some of
11 your orators, also send out, when market conditions are favorable, telegrams and letters to millers an others (non-residents in Chicago) on the consumer's side of the market offering to sell grain at a named price and subject to shipment within a named time, if such offers are accepted within a certain time, transactions of this kind being also known to the trade as "cash sales for deferred shipment."

(3) Another kind of future trading engaged in by some of the members of said Board of Trade prior to October 1, 1921, was the making of trades known as "privileges," "offers," "puts and calls," "indemnities," or "ups and downs," which are unilateral contracts, in which a member of said Board pays to another member a small sum ($500 for every five thousand bushels of grain involved) for the privilege of calling on the member receiving such consideration to deliver to the paying member at a future date a specified quantity of grain of a grade deliverable upon future contracts of said Board, or in which a member pays such consideration for the privilege of delivering to the member receiving such compensation on a specified future date a certain number of bushels of said grain, the paying member having the option to deliver or receive, but not being obliged to do so; and when the course of the market makes it profitable for him to exercise his said option he performs said contract either by making with the other member a bi-lateral contract for future delivery (such as is hereinafter described) for the quantity and at the price named in optional contract, or by the delivery or receipt of warehouse receipts of a regular warehouse of the character hereinafter described.

(4) Many members of said Board, including some of your orators, daily engage either as principals or as agents, in the making upon said exchange, of contracts with other members of the Board
12 for the purchase and sale of grain for future delivery, said contracts providing that the seller therein shall deliver in Chicago, the grain covered by the contract upon any day of the named month that he shall select. Such contracts relate almost wholly to wheat, corn and oats, and the volume of such trading is so large, that said Board has set aside in its exchange room three separate spaces, upon each of which it has constructed a circular raised platform, commonly known as a "pit," where its members may conveniently, and do daily, gather and make such contracts with each other by open vive voce bidding; and respecting such trading the rules of said Board have for many years required, and now require, that all orders received by members to buy or sell for future delivery must be executed in the open market upon its exchange room and only during the hours of regular trading; and said rules also provide that no trade or contract for future delivery shall be made or offered to be made by any member of said Board, except between 9:30 a. m. and 1:15 p. m., except on Saturday, when the trading must close at 12 o'clock M., it being the object and intent of said rule that all such trading which shall tend to the maintenance of a public market shall be confined

within the hours above specified; by reason whereof all such trading in grain for future delivery by members of said Board is in fact confined to said Exchange room and said market hours; and both buyers and sellers in all said contracts are personally present in the City of Chicago when the contracts are made; and another rule of said Board requires that any offer to buy or sell for future delivery when made openly in the exchange room during the hours for regular trading, may be accepted by any other member of said Board, and that the contract shall be made with the member first accepting said offer.

8. That all such contracts for future delivery contemplate
13 and provide for the delivery of warehouse receipts instead
of the grain, and only of such warehouse receipts as the rules of said Board make valid for delivery; that a rule of said Board now and for many years in force (see Rule XXI of Exhibit B), provides that only such warehouse receipts shall be deliverable upon contracts for future delivery as shall be issued by warehouses which have complied with the rules, regulations and requirements of said Board, and have been by the Board of Directors declared regular warehouses for the storage of grain; and none of the warehouses thus made regular are located outside of the State of Illinois; and said rules also make it the duty of the Board of Directors on the first of July in each year to designate the grain elevators or warehouses in Illinois whose receipt shall be deliverable between its members on their contracts for future delivery for the ensuing year; but said rule also provides that said Board of Directors may declare, as regular elevators, only such elevators or warehouses as have been licensed by the State of Illinois to conduct a public warehouse, pursuant to the provisions of a statute of that state entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to Article XIII of the Constitution of this state," which said Act provides that it shall be the duty of every warehouseman of Class "A" to receive for storage any grain tendered him and to mix such grain with other grain of a similar grade received at the same time as near as may be, and such statute further provides that the warehouse receipt issued for such grain so received into said warehouse shall state on its face that the grain mentioned therein has been received into store, to be stored with other grain of the same grade received about the same
time as the date of said receipt; and by said Act it is further
14 provided that, when any holder of any such warehouse receipt
shall demand the delivery of the grain therein mentioned, said proprietor shall deliver on said receipt such of the grain of that particular grade as was first received by him in store or which had been the longest time in store in his warehouse; and, while said statute provides that, with the consent of any depositor of grain and the proprietor of a warehouse, the particular grain of said depositor may be kept in a bin by itself, apart from that of other owners, and that such bin shall be marked and known as a "separate bin," and that the receipt therefor, shall so state and contain the number of such special bin, grain in Chicago is seldom, if ever, stored in a public warehouse of Class "A" in a special bin, and if so stored the ware-

house receipts issued for such grain are not, and never have been, deliverable upon said contracts of future delivery made by members of said Board; nor has said Board ever declared a regular elevator under said rule any warehause which has not been licensed under said statute to conduct a warehouse of Class "A."

9. That at the present time there are twelve warehouses, with an aggregate capacity of 12,950,000 bushels, whose proprietors have received under said statute, licenses to conduct Class "A" warehouses, and which have been declared regular by the Board under said Rule XXI, for the year ending July 1, 1922. That the space of each of said warehouses is subdivided into numerous partitions or bins, the capacity of said bins ranging from 2,000 bushels to 7,000 bushels; and that almost all grain is received in Chicago upon cars, whose capacity is from 1,500 to 2,000 bushels, and whenever a carload of grain is unloaded into any of said elevators of Class A, it is immediately carried into one of said bins and is there at once mixed with other grain of like grade already stored in such bin, and thus
15 any individual carload of grain immediately loses its identity upon being received in such warehouse; and when the person, to whom the warehouse receipt is issued for such carload of grain, or his assignee, tenders said warehouse receipt to said warehouseman for the purpose of having the grain therein specified delivered to him, he never gets the identical grain delivered to such warehouse when it issued said receipt.

10. That in this trading for future delivery on the exchange of said Board during any year many millions of bushels of wheat, corn and oats are bought and sold for future delivery, and as respects at least three-quarters of the grain covered thereby, said contracts are fulfilled or settled without delivery of any warehouse receipts, but are settled through a system of offsetting purchases with sales and the payment of differences in the market prices under a system commonly known as the "ringing" system which is provided for by the rules of said Board; and that practically all said remaining future contracts are performed or completed during the month specified for delivery by the delivery by buyers to sellers of warehouse receipts of public warehouses of Class "A" which warehouses have been made regular under the said rules of said Board.

That while said Rule XXI makes grain in cars deliverable on future contracts during the last three days of the delivery month mentioned in said contract, where receipts are issued by the carrier, it is also provided by said rule that said delivery shall not be complete, and that bills for said grain so tendered shall not be payable, until said grain shall have been unloaded into an elevator which has theretofore been made regular for delivery by said Board of Directors, and elevator receipts covering said grain shall have been delivered to the buyer; and that the amount of grain in carload lots actually delivered under the provisions of this rule on
16 contracts for future delivery is much less than 1 per cent of the total volume of said trading for future delivery and even

a very small percentage of the total quantity of grain actually delievered upon said contracts; and that, while said rule also authorizes said Board of Directors, when an emergency exists, to provide that grain in cars may be tendered during any business day of the month specified in the contract for future delivery, said rule also provides that such tender shall not be deemed a complete delivery until such grain shall have been unloaded into an elevator made regular by said Board and the warehouse receipt therefor shall have been delivered to the buyer; and while said Rule XXI also authorizes said Board of Directors, when an emergency exists requiring more storage room than can be supplied by the regular elevators, to make other places suitable for the storage of grain regular for storage of grain deliverable under the rules of the Board, said Board has seldom, if ever, been able to induce proprietors of places otherwise suitable for the storage of grain to qualify under the Warehouse Statute of the State of Illinois for the short period of time during which any such emergency exists, and that the quantity of storage room in Class "A" warehouses declared regular by said Board of Trade is such that an emergency, such as is contemplated in said rule, rarely occurs in Chicago, and then lasts for only a short period of time, and that at the present time said Board of Directors of said Board have not exercised said emergency powers conferred upon them, and the only grain now deliverable on said future contracts is grain for which warehouse receipts have been issued by said regular elevators, and carloads of grain tendered during the last three days of the delivery month followed by delivery of warehouse receipts when such grain is unloaded into a regular elevator.

17 11. That a large part of the total volume of trading for future delivery upon the exchange of said Board above described consists of contracts made by grain merchants, millers and others, who make such contracts only for the purpose of insuring themselves against price fluctuations respecting other grain owned by them for the purpose of merchandizing or shipping to other consuming markets or to manufacture into flour, and that in most cases such contracts for future delivery are fulfilled, not by the delivery of the grain but by the making of counter-contracts to offset against the ones originally made; that another large part of the volume of said future trading on the exchange of said Board consists of contracts made by or for so-called speculators, being persons who have capital and make a study of trade conditions affecting prices and endeavor to forecast the future prices of grain and to profit thereby through the making of said contracts for future delivery.

That there is produced yearly in the United States more wheat, corn and oats than is consumed within said United States; that from the year 1899, to the year 1913, both inclusive, the number of barrels of wheat-flour exported in any year, as disclosed by the statistics of the United States Department of Commerce, was not less than 8,826,000 barrels, and in one of said years the number of barrels exported was 19,716,000; and that during one of said years

there was exported 154,856,000 bushels of wheat, and except in one of said years (when there was a failure of the crops), there has been not one of said years in which the amount of wheat exported did not exceed 23,000,000 bushels; and that during one of said years there was exported over 209,000,000 bushels of corn, and in none of said years was there exported less than 26,000,000 bushels of corn and that yearly exports of oats during said years range from over 46,000,000 bushels to 1,000,000 bushels.

18 That in order to enable its members and their customers to have all obtainable knowledge when making their said contracts for future delivery, said Board gathers from all parts of the world such data and other information respecting the conditions of growing crops, the amounts of grain on hand in different countries, etc., as it can obtain—incurring a large expense therein—and makes such information available to all its members, and through them to their customers; and said Board also collects and sanctions the distribution of its own continuous quotations of prices made in its said "pits".

That other commercial exchanges which furnish to their members and their customers like facilities for making contracts for future delivery, are located and maintained at Minneapolis, Duluth, Omaha, Kansas City and St. Louis; that the members of all of such exchanges are competing with the members of said Board and these other exchanges, for the business of making contracts for future delivery for customers and the purchase of cash grain at country points; and many of the members of said Board are also members of some or all of said other exchanges, and they trade in said other exchanges for future delivery when price conditions there, as compared with price conditions on said Board, make it profitable for them to do so; and that the facts above stated, as well as the present supply of available grain and the present and future requirements of the millers and consumers, not only in this country but in different countries of Europe, constitute the elements, which determine from time to time the prices, at which said future trading on said Board is transacted; and that no member of said Board has ever been indicted or convicted, under either the law of the State of Illinois or the federal statute, for running a "corner" on said Board.

19 12. That during the years from 1884 to 1913, both inclusive, wheat of the grade contemplated in the contracts for future delivery on the said Board sold as low as 48⅞ cents per bushel and never more than two dollars per bushel, and during most of said time the price of said wheat was below $1.00 per bushel; and that during the same years corn of the kind and grade deliverable upon said future contracts sold as low as 19½ cents per bushel and never higher than one dollar per bushel, and for most of said time sold below 60 cents per bushel, and that during said years the price of oats of the quality and grade deliverable upon said future contracts sold as low as 14¾ cents per bushel and never sold higher than 62½ cents per bushel and for much the greater part of said period sold

under 40 cents per bushel; and that at the present time contract wheat is selling for about $1.05 per bushel, contract corn about 46 cents a bushel and contract oats at about 31 cents a bushel; and that no member of said Board can afford to make contracts for future delivery and pay the tax thereon imposed by The Future Trading Act and said law in fact prohibits all those who are not members of a board of trade, which has been designated by the Secretary of Agriculture a contract market under said Act, from making any contracts for future delivery respecting grain.

13. Your orators are advised by their counsel and charge that said Future Trading Act violates the Constitution of the United States in the following, as well as in other, respects:

(1) It seeks to deprive your orators and other members of said Board of their property without due process of law contrary to the 5th amendment of said Constitution, in that the compulsory admission to membership on said Board of representatives of co-operative associations of producers as required in clause (E) of Section 5 will impair the value of all memberships in said Board.

20 (2) It violates Section VIII of Article I, and the 10th Amendment of said Constitution, in that it attempts to regulate commerce, which is not commerce with foreign governments or among several states or with the Indian tribes, but is commerce wholly between persons contracting within the State of Illinois respecting the purchase or sale of grain which forms a part of the common property of that state—in that, in other words, it seeks to regulate commerce which is not interstate but purely intrastate in character.

(3) It violates the 10th amendment to the said Constitution in that it interferes with the right of the State of Illinois to provide for and regulate the maintenance of a grain exchange within its borders upon which is conducted the making of contracts which are merely intrastate transactions.

(4) It violates the 5th amendment to the Constitution in that it gives to farmers' co-operative associations and their representatives the right to share in and enjoy the use of real estate owned by the Board (a private corporation) and used for the exclusive use and benefit of its members, and this without giving the Board or its members any compensation therefor.

(5) It violates the 5th amendment to said Constitution, in that it attempts to take the private property of the Board and its members for public use without just compensation to such owners.

(6) It violates Section 8 of Article I, and the tenth amendment of said Constitution, in that the taxes imposed by said Act are not laid either to pay the debts, or provide for the common defense or general welfare of the United States, but for the purpose only of regulating grain exchanges as respect intrastate transactions of their

members and of benefiting a class (producers of grain) at
21 the expense of another class (members of grain exchanges).

(7) It violates the 4th amendment to said Constitution in that it authorizes unreasonable searches by the Secretary of Agriculture respecting books and papers which do not relate to any property upon which a tax is imposed, nor to any transaction within the commerce power of Congress.

(8) It violates the 5th amendment to said Constitution in that it deprives members of said Board and of other grain exchanges of the right to contract for the purchase of grain for future delivery as fully as other owners and growers of grain and of land on which the grain is grown, and associations of such growers are permitted by the law to contract.

14. That your orators did, on the 18th day of October, 1921, request the board of directors of said Board to cause said Board to institute a suit to have such "Future Trading Act" adjudged unconstitutional before complying therewith, but said board of directors has refused to comply with said request, and state that they intend to comply with the provisions of said Act and that your orators are informed and believe that said Board of Directors refused said request because they fear to antagonize the public officials whose duty it is to construe and enforce said Act and that your orators fear that, acting under the coercion imposed upon them by said Act, said Board of Directors will admit to membership in said Board authorized representatives of co-operative associations of producers in order to comply with sub-clause (*a*) of Section 5 of said Act, and will apply to said Secretary of Agriculture to designate such Board as a contract market under said Act, and will do all acts necessary to entitle
said Board to be designated as a contract market, unless said
22 directors and said Board shall be enjoined by this court from
so doing; and that such action by said Board of Directors will cause irreparable injury to your orators and other members of said Board; that there is no collusion between your orators and any of said Board of Directors to confer on a court of the United States jurisdiction of a cause of which, it would not otherwise have jurisdiction; and that as respects each of your orators, the amount involved and the matters in dispute in this suit, exclusive of interest and costs, is more than $3,000.

15. Forasmuch, therefore, as your orators are remediless in the premises except in a court of equity, and to the end that said Henry C. Wallace, Secretary of Agriculture of the United States; David H. Blair, Commissioner of Internal Revenue for the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District of Illinois; Board of Trade of the City of Chicago, Joseph P. Griffin, James J. Fones, Theodore E. Cunningham, Louis C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters

Charles H. Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis, James C. Murray, as directors of said Board, and John R. Mauff, as its Secretary, may be required to make direct, true and complete answer to this bill, but not under oath (answers under oath being hereby waived); that each and every provision of said Future Trading Act be adjudged to violate the Constitution of the United States and to be void, and that a temporary injunction may immediately issue and upon final hearing, be made permanent; (1) enjoining said Henry C. Wallace, as Secretary of Agriculture,
23 from taking any steps whatever, legal or otherwise, to induce or compel said Board of Trade or its directors to comply with sub-clause (*e*) of Section 5 of said Future Trading Act or to be designated a contract market under said Act, or to compel said Board or any of its members to comply with any of the provisions of said Act, and also enjoining said Wallace from requiring said Board or any of its members to make any report or keep any record relating to any contracts for future delivery made upon the exchange of said Board, and from taking any other steps or do- any other act authorized or required by such Future Trading Act as respects said Board or its members; (2) also enjoining and restraining and David H. Blair as Commissioner of Internal Revenue for the United States, John C. Cannon as Collector of Internal Revenue for the First District of Illinois and Charles F. Clyne, District Attorney of the United States for the Northern District of Illinois, from attempting to collect by suits or prosecutions, or otherwise, any tax, penalty, or fine, mentioned in, or imposed by said Act, from any member of said Board; (3) and also enjoining said Board, and each of its said officers and directors, from applying to said Secretary of Agriculture to have said Board designated as a "contract market" under said Act, and from admitting to membership in said Board any representative of any co-operative association of producers in compliance with, or under the terms specified in sub-clause (*e*) of Section 5 of said Act, or from taking any other steps for the purpose or with the intent to comply with the said Act; and that your orators may have such other and further relief as to your Honors shall seem meet.

16. May it please your Honors to grant unto your orators a preliminary and permanent injunction against said defendants
24 as above prayed, and also a writ of subpoena of the United States directed to said Harry C. Wallace, Secretary of Agriculture of the United States; David H. Blair, Commissioner of Internal Revenue of the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District of Illinois; Board of Trade of the City of Chicago, Joseph P. Griffin, president and a director of said Board of Trade, and James J. Fones and Theodore E. Cunningham, vice-presidents and directors of said Board of Trade, and Louis C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward T. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan M.

Clement, Fred S. Lewis and James C. Murray, directors of said Board of Trade, and John R. Mauff, secretary of said Board of Trade commanding them on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this court.

ROBBINS, TOWNLEY & WILD,
Solicitors for Complainants.

HENRY S. ROBBINS,
Counsel.

25 STATE OF ILLINOIS,
County of Cook, ss:

John Hill, Jr., being duly sworn, says that he is one of the complainants in the foregoing bill, and that he has read said bill and knows the contents thereof, and that all the allegations of said bill are true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

JOHN HILL, JR.

Subscribed and sworn to before me, a notary public in and for said county and state, this 25th day of October, A. D. 1921.

OLIVE M. BUGGIE, [SEAL.]
Notary Public.

26 EXHIBIT A.

Charter of Chicago Board of Trade.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. That the persons now composing the Board of Trade of the City of Chicago, are hereby created a body politic and corporate, under the name and style of the "Board of Trade of the City of Chicago," and by that name may sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise or purchase, and dispose of the same by sale, lease, or otherwise (said property so held not to exceed at any time the sum of two hundred thousand dollars); may have a common seal, and alter the same from time to time; and make such Rules, Regulations and By-Laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Sec. 2. That the Rules, Regulations and By-Laws of the said existing Board of Trade shall be the rules and By-Laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said Association, known as the "Board of Trade of the City of Chicago," shall be the officers of the corporation hereby created, until their respective offices shall

regularly expire or be vacated, or until the election of new officers according to the provisions hereof.

Sec. 3. The officers shall consist of a President, one or more Vice-Presidents, and such other officers as may be determined
27 upon by the Rules, Regulations, or By-Laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the Rules and Regulations of said corporation hereby created, and until their successors are elected and qualified.

Sec. 4. The said corporation is hereby authorized to establish such Rules, Regulations and By-Laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

Sec. 5. The time and manner of holding elections and making appointments of such officers as are not elected, shall be established by the Rules, Regulations and By-Laws of said corporation.

Sec. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the Rules, Regulations and By-Laws thereof.

Sec. 7. Said corporation may constitute and appoint Committees of Reference and Arbitration, and Committees of Appeals, who shall be governed by such rules and regulations as may be prescribed in the Rules, Regulations or By-Laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the Association, or by other persons not members thereof; the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses, and issue subpœnas and attachments, compelling the attendance of witnesses, the same as justices of the peace, and in like manner directed to any constable to execute.

Sec. 8. When any submission shall have been made in writing, and a final award shall have been rendered, and no appeal taken within the time fixed by the Rules or By-Laws, then, on
28 filing such award and submission with the Clerk of the Circuit Court, an execution may issue upon such award as if it were a judgment rendered in the Circuit Court, and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

Sec. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the President or Secretary is hereby authorized to administer such oaths of office as may be prescribed in the By-Laws or Rules of said corporation. Said bonds shall be made payable and conditioned as prescribed by the Rules or By-Laws of said corporation, and may be sued and the

moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

Sec. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, to examine, measure, weigh, gauge, or inspect flour, grain, provisions, liquor, lumber, or any other articles of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller of the quantity, grade or quality of the same, and shall be binding upon the members of said corporation, or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers, or inspectors; nothing herein contained, however, shall compel the employment, by any one, of any such appointee.

Sec. 11. Said corporation may inflict fines upon any of its
29 members, and collect the same, for breach of its Rules, Regulations, or By-Laws; but no fine shall exceed five dollars. Such fines may be collected by action of debt, before a justice of the peace, in the name of the corporation.

Sec. 12. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill.

WM. R. MORRISON,
Speaker of the House of Representatives.
JOHN WOOD,
Speaker of the Senate.

Approved February 18, 1859:

WM. H. BISSELL.

30 EXHIBIT B.

Containing Certain Rules of the Board of Trade.

Rule IV.

Sec. 9. When any member shall be guilty of improper conduct of a personal character in any of the rooms of the Association, or shall violate any of the rules, regulations or by-laws of the Association or shall be guilty of any dishonorable conduct, for which a specific penalty has not been provided, he shall be suspended by the Board of Directors from all the provileges of membership for such period as in their discretion the gravity of the offense committed may warrant. When any member shall be guilty of making or reporting any false or fictitious purchase or sale, or where any member shall be guilty of an act of bad faith, or any attempt at extortion or of any dishonest conduct, he shall be expelled by the Board of Directors. Or when a member shall, either in the Exchange building or elsewhere, contract

to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this State, he shall forfeit the right to have said contract enforced under the rules of this Association.

Any member suspended from the privileges of the Association shall not be allowed to trade or do any business upon the floor of the Exchange in his own name, either through a broker or employe.
* * *

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed by
31 one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Rule X.

Membership and Assessments.

Section 1. All applications for membership in the Association shall be referred to the Committee on Membership, who shall hold regular stated meetings for examining such applicants and their sponsors, in person, under such rules and regulations as may be made by the Board of Directors. Any male person of good character and credit, and of legal age, on presenting a written application, indorsed by two members, and stating the name and business avocation of the applicant, after ten days' notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership upon approval by at least ten (10) affirmative ballot votes of the Board of Directors; provided, that three negative ballot votes are not cast against such applicant, and upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-Laws of the Association, and all amendments that may be made thereto.

Sec. 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty dollars, to any person eligible to membership who may be ap-
32 proved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him.

Rule XXI.

Regular Deliveries.

Section 1. All deliveries upon contracts for grain or flax seed, unless otherwise expressly provided, shall be made by tender of regular warehouse receipts, which receipts shall have been registered by an officer duly appointed for that purpose. All such warehouse receipts shall be made to run five days from date of delivery on regular or customary storage charges, which regular or customary charges shall follow such warehouse receipts and be chargeable upon the property covered by the same, and shall be issued by such houses as have complied with the Rules of the Board of Trade and the Regulations and Requirements of the Board of Directors, and have been declared regular warehouses for the storage of grain or flax seed by said Board of Directors; and it shall be the duty of the Board of Directors, prior to the first day of July in each year, to inspect all warehouses, the proprietors or managers of which shall apply to have their receipts declared regular for delivery on contracts under the Rules of the Board of Trade, and no warehouse shall be declared a regular warehouse unless it is conveniently approachable by vessels of ordinary draft and has customary shipping facilities, and
33 unless the storage rates on all grain or flax seed in such warehouses in bulk and in good condition, shall not be in excess of one and one-quarter ($1\frac{1}{4}$) cents per bushel for the first ten days or part thereof, and one-twentieth (1-20) of one cent per bushel for each additional day thereafter so long as such grain or flax seed remains in good condition, and unless the proprietors or managers of such warehouse are in good financial standing and credit and are carrying on and intend to continue to carry on the legitimate business of public warehousemen under the laws of the State of Illinois and in accordance with the Rules of the Board of Trade of the City of Chicago and the Regulations and Requirements of the Board of Directors and until the proprietors or managers of such warehouse shall file a bond with sufficient sureties in such sum and subject to such conditions as may be deemed necessary by the Board of Directors, under the Rules of the Board of Trade and the Regulations and Requirements of the Board of Directors in reference to warehouses. * * *

Warehouse receipts issued by warehouses so declared regular by the Board of Directors shall be regular for delivery on contracts under the Rules of the Board of Trade so long as the said warehouse shall continue to be a regular warehouse, but the term for which any warehouse is declared a regular warehouse to issue such receipts shall be limited to and expire on the first day of July in each year. No receipts issued on grain received in any warehouse shall be regular for delivery under the Rules of the Board of Trade after that date unless the warehouse upon which it has been issued has again been declared a regular warehouse by the Board of Directors; provided, however, that receipts issued before the first day of July by warehouses which

iave been regular warehouses during the preceding year, but which have not been declared regular for the succeeding year, shall
34 be regular for delivery upon such contracts for six months after the first day of July; but nothing contained herein shall revent the Board of Directors from declaring any warehouse, or the eceipts thereof, irregular at any time for violation or non-compliance with the laws of the State of Illinois or any of the Rules of the Board of Trade or of the Regulations and Requirements of the Board of Directors.

Provided, that the Board of Directors shall have power, when in heir judgment an emergency exists requiring more storage room han can be supplied by the regular elevator warehouses, or because of an inability to obtain insurance on grain stored therein, to declare any store-houses, vessels or places suitable for the storage of grain or lax seed within the Chicago Switching District—wherein the cost of delivery to vessels or railroad cars shall not be greater than such as s made by the regular elevators for the same service—to be regular places for the storage of grain deliverable under the Rules of the Board of Trade.

And provided further, that in case it shall happen that at any ime there shall be no warehouses which shall be regular warehouses for the storage of grain and flax seed, then the Board of Directors may declare any warehouses suitable for the storage of grain or flax eed, whose aggregate capacity shall not exceed twenty-five million 25,000,000) bushels, regular warehouses for the storage of grain or flax seed, upon such terms and for such period as the Board of Directors in its discretion may deem necessary or proper, and the warehouse receipts issued by warehouses so declared regular under his proviso, shall be regular for delivery on contracts under the Rules of the Board of Trade, in the same manner as if issued by warehouses declared regular under the foregoing provisions of this section in regard to declaring warehouses regular for the term
35 ending on the first day of July in each year.

On and after January 1st, 1915, grain in cars, including hat graded "subject to approval," shall be deemed a valid tender on contracts during the last three business days of any month, under he provisions of the rules pertaining to the delivery of warehouse receipts—the railroad receipt issued against same evidencing ownership erving to convey the title to the grain, same as warehouse receipts ssued against grain in warehouses—when conforming to the following requirements:

A. When within the Chicago Switching District; or, if arriving from outside of the same, when it has reached the railroad yards, where samples are taken by the Illinois State Grain Inspection Department, and when billed to an elevator the receipts of which are regular on delivery; provided nevertheless, that grain so delivered shall be unloaded into the elevator to which it is billed before the delivery shall be deemed complete, and bills for grain so tendered shall not be due and payable until the elevator receipt covering same shall have been delivered to the buyer. Provided further, that deliveries under this rule may be diverted by the buyer from unloading

at a regular warehouse to any other unloading where the same w
be weighed by the Weighing Department of this Association, by pa
ing for the property before diversion. * * *

E. At any time when, in the judgment of the Board of Directo
an emergency exists, grain in cars shall be deemed a valid tender
contracts, on any business day of any month, when the grade of su
grain tendered is evidenced as being a proper grade under the ru
for tender, by a certificate of inspection of the Illinois State Gra
Inspection Department showing the inspection to have been ma
during the preceding seventy-two hours, and when co
36 & 37 forming to the other requirements of Paragraphs A, B
and D of this Section, except that any excess or shortage
weights at time of unloading, if then weighed by the Weighing D
partment of this Association, shall be settled for at the current m
ket value on day such variation is known to both parties.

38 EXHIBIT C.

Grain Growers' Contract.

Revised Form.

This Agreement made and entered into this — day of ——, 19
by and between..
....
....

(Here insert name of Elevator Company or Grain Growers' Association w
whom the Grower contracts)

a corporation (or) an association duly organized and existing un
the laws of the State of ——, (hereinafter referred to as the Eleva
Company), and having its principal place of business at —— pa
of the first part, and the undersigned producer of grain as ow
(entitled to crop rental) or as tenant, of land located in the Coun
of —— ——, State of ——, (hereinafter referred to as the Growe
party of the second part,

Witnesseth:

That whereas the Elevator Company is the owner of, or has co
tracted for the use of, facilities for weighing, grading, storing a
shipping grain in the county aforesaid, and has by contract w
the U. S. Grain Growers, Inc. (hereinafter referred to as the U
Association), appointed the U. S. Association, an agricultural
ganization, instituted for the purposes of mutual help and not hav
capital stock or conducted for profit, as its exclusive sales agent
the marketing of grain of the members of said U. S. Association
order to correct the present wasteful and uneconomic methods
handling grain, and in order that the said grain can be marke
and distributed on a cost basis; and

39 Whereas the Grower is a bona fide producer of grain
virtue of owning or operating farm land, is entitled to

ownership and control of all or a part of the grain produced thereon, and is a member of the U. S. Association; and

Whereas the Grower desires to sell, and the Elevator Company desires to purchase, or handle for sale, all the grain that shall be produced as hereinafter provided;

Now therefore, the parties agree:

In consideration of the mutual obligations of the respective parties hereto, of the outlays and expenses incurred, and to be incurred, by the Elevator Company in carrying out the purposes of this agreement, and in consideration of the benefits derivable from the contractual affiliations of the Elevator Company with the U. S. Association:

Section 1. The Elevator Company agrees that it shall provide by ownership, lease or otherwise, facilities for weighing, grading, storing and marketing grain; that it shall receive and handle as hereinafter specified, or shall purchase at prices, and upon such terms, as are hereinafter set forth, all the grain hereinafter mentioned tendered to it by the Grower in accordance herewith; that it shall market all said grain through the U. S. Association according to the terms and conditions of the contract between the U. S. Association and the Elevator Company, a copy of which is attached hereto and made a part hereof as though copied herein.

This contract shall govern all the grain which is controlled by the Grower, and produced upon land described in the preamble of this agreement which he now owns, or shall hereafter own or operate during the life of this contract, and all such grain as he now has in possession, but not grain required and used by the Grower, or sold by him locally for local use for seed or feed, or sold otherwise with the written approval of, and upon the terms and conditions prescribed by, the U. S. Association.

Section 2. During the life of this contract the Grower agrees to deliver and sell to the Elevator Company, or otherwise market through said company, all the grain covered by this contract, and grown upon the land above described, at a price to be determined as hereinafter set forth.

Section 3. It is hereby agreed that nothing in this contract shall deprive the Grower of control in any degree over his own acreage or production.

Section 4. This contract shall become effective with respect to its provisions concerning grain, 10 days after receipt by the Grower of a written notice to that effect by the Elevator Company. This contract shall be in effect from such date to June 30, 1927.

This contract shall extend automatically and continue in full force and effect as to each of the parties hereto from year to year after June 30, 1927, until the same shall have been terminated by either party as to any kind of grain in accordance with the following terms and conditions:

(*a*) Notice in writing of said termination must be given by suc party desiring the termination to the other party at least forty-fiv days, and not more than sixty days, prior to the close of the contrac year, at the end of which it is sought to terminate the contract.

(*b*) The party desiring to make such termination must, prior t the effective date of such termination, pay any indebtedness the due the other party.

(*c*) If the foregoing conditions are fully complied wit
41 this contract shall thereupon be terminated on the da named; provided, however, such termination shall not affe any uncompleted sales or transactions or uncompleted obligations c current commitments between the parties hereto; nór release eith from any indebtedness then unpaid or hereafter accruing under th contract.

Section 5. The title to the grain covered by this contract sha remain with the Grower, unless otherwise specified herein, un delivered at point of storage or shipment designated by the Elevat Company; at the time of such delivery title to the said grain sh pass to the Elevator Company when paid for, except when otherw agreed upon by the parties hereto, except as to shipment by t Grower on consignment, in which case title shall remain with t Grower until sold by the U. S. Association, and unless some ot arrangement shall be effected by mutual agreement between t parties at the time of the transaction.

Section 6. Upon notice in writing to the Elevator Company by t Grower, the contract between the Grower and said Elevator Compa may be transferred to such other elevator company affiliated by c tract with the U. S. Association, as the Grower shall designate, u such terms as the U. S. Association shall approve.

Upon dissolution of the elevator company or failure for any ot reason of said elevator company to function under the terms of t contract all right, title, interest and obligations of the elevator c pany shall immediately be transferred to the U. S. Association a shall then be subject to assignment to such other elevator comp or grain growers' association as the U. S. Association shall elect.

It is further agreed that the Grower may, from time
42 time, deliver his grain covered by this contract to anot elevator company than the one executing this contract, p vided the other elevator company has executed a contract with U. S. Association for the exclusive handling of growers' gr through that agency, and provided the condition of the roads or inability of the Elevator Company to handle the grain becaus lack of storage, or transportation facilities, renders it necessary, for any other reason held to be good and sufficient by the U Association.

Section 7. This contract cannot be assigned, unless otherv specifically provided herein, to any person except to the purch of, and in connection with the bona fide sale of, the land owned

the Grower at the time of the execution of this contract, or except as it may be assigned by one tenant to another tenant, by an owner to a tenant, or by a tenant to an owner, succeeding to the former respectively in the operation of the land covered by this contract. In case of such transfer, this document may be filed with the Elevator Company, and a new contract may be executed in lieu thereof. Any other attempted assignment shall be of no force or validity whatsoever.

Section 8. This contract shall be terminated whenever the Grower shall for any reason be expelled from membership in the U. S. Association; but such expulsion shall not affect the rights and liabilities of the parties hereto as to the unmarketed grain then in the possession of either party.

Section 9. Whenever the Grower delivers any grain to the Elevator Company, he shall give the Elevator Company a signed statement showing what liens, if any, there are upon such grain; and the Elevator Company shall have the right to pay off all or
43 any part of the said lien or liens in order to perfect further its title to the grain, and thereupon the said Elevator Company shall make proper deductions for the same from the proceeds of the sale of said grain belonging to the Grower. If the amount of said liens is excessive in the judgment of the Elevator Company, the Grower hereby agrees to pay off sufficient to reduce the same to the amount stated by the Elevator Company to be reasonable, or the Elevator Company may handle said grain on the consignment basis, by and with the consent of the mortgagee.

Section 10. The Elevator Company agrees to observe and perform such rules and regulations covering the inspection, grading and weighing of grain as may be established by the U. S. Association not in conflict with state and federal rules, regulations and statutes.

Section 11. From time to time, upon the reasonable request of the Elevator Company, the Grower shall furnish such crop and statistical data as requested, on the forms provided for that purpose by the Elevator Company or the U. S. Association. The Elevator Company, upon the reasonable request of the Grower, shall furnish the Grower for his use such information concerning market conditions and quotations as it shall have in its possession.

Section 12. The Elevator Company shall pay, and the Grower shall accept as payment, for any and all of the grain covered by this contract, a price to be determined by one of the methods described in Sections 13 and 14, as the Grower may elect. The said right of election applies to each kind of grain separately.

Section 13. Method A. Individual Sales Method.—The Grower shall sell to the Elevator Company all grain covered by this contract which is not otherwise provided for by a valid election of the
44 said Grower, in accordance with either of the following methods, Method A-1 or Method A-2, or by any other method

mutually agreed upon which is in harmony with the other provisions of this contract. The Grower shall declare his choice of method at the time of the delivery of the grain to, or upon the order of, the Elevator Company.

A-1. He may sell for cash at a price offered by the Elevator Company.

It is expressly understood and agreed that the Elevator Company shall resell grain so purchased from the Grower through the U. S. Association but the same shall be sold at the discretion of the Elevator Company in respect to time, place and quantity, and without regard to the action of other companies or individuals employing the U. S. Association as a sales agent.

A-2. The Grower, singly or jointly with other growers, may consign grain through the Elevator Company for sale by any method by the U. S. Association, in which case control of time of delivery, shipment and sale shall remain with the Grower, and the net proceeds of sale, less deductions for costs of handling, as hereinafter provided, shall be returned to the Grower. This is without regard to the action of other individuals and companies employing the U. S. Association or Elevator Company as sales agent.

The Elevator Company is hereby exempted from liability for losses in handling, storing, shipping and marketing grain committed to it on the consignment basis, where the negligence of the Elevator Company is not the proximate cause of such loss or damage.

In all shipments by the Individual Sales Method, the U. S. Association shall act solely as sales agent for the Grower or the Elevator Company, and shall exercise no power of regulation or control
45 over time of sale, time of shipment, destination, quantity of grain to be sold, or over the price at which the grain shall be sold, except as the Grower, under Method A-2, or the Elevator Company, under Method A-1, from time to time may, at their option, delegate to the U. S. Association authority to determine such questions as to individual transactions.

Inasmuch as the failure or refusal of the Grower to deliver to, and market and sell through, the Elevator Company the grain governed by this contract will cause detriment and injury to the Elevator Company, will impair its efficiency and the obligations of contracts to which it is a party, and will increase its expense and liability to damage, all of which items it is impracticable and extremely difficult to fix with precision; therefore, if the Grower shall fail or refuse to market or to sell through or to the Elevator Company any grain covered by this agreement, then the Grower agrees to pay to the Elevator Company, and the Elevator Company agrees to accept, the following sums per bushel: wheat, 10c; rye, 10c; flax, 20c; and all other grain, 6c; for all grain covered by this contract which is sold, marketed or withheld by or for the Grower other than in accordance with the terms hereof, as liquidated damages for the breach of this contract. The above agreed items are predicated upon average prices and market conditions for a period of years.

None of the aforesaid payments are to be construed to be a penalty

or forfeiture but as stipulated liquidated damages which are hereby agreed to as reasonably representing throughout the period covered by this contract what the Elevator Company and the members thereof will suffer by reason of such refusal or default.

This option, described as Method A, whereby the Grower may sell individually to the local Elevator Company, is severable and distinct from the provisions contained in Method B, is dependent
45¼ upon the consideration of the obligation of the Elevator Company to furnish facilities for the efficient marketing of grain through itself and affiliated companies and associations, upon the considerations stated in other sections (excepting therefrom Sec. 14) of this contract, and upon the consideration of the obligation of the Grower to sell all his grain covered by this contract to or through the Elevator Company; and the validity and binding effect of the provisions contained in this Section (13) shall in nowise be dependent upon, or related to, the provisions contained in Section 14 of this document.

All the provisions of this contract, save those contained in Section 14, shall apply with full force and effect to the sales of grain governed by this Section entitled "Method A."

Section 14. Method B. Pooling Method.—

B-1. Local Pool.—(*a*) The Grower may agree to have all of any kind of grain delivered by him to the Elevator Company commingled and mixed with grain of like kind and grade delivered by other growers, and the same sold during such period of time as may be agreed upon between the growers, provided storage and transportation facilities shall permit, in which case he shall receive, as payment, the average price secured for all grain of like kind and grade so co-mingled and sold, less deductions for costs of handling, as hereinafter provided, and subject to such equitable differentials as said company may find necessary to establish. The various lots of grain sold under this method shall be known as pools. There may be established as many pools of grain as there are kinds and grades of grain to be handled. The pools shall include all the commitments for any one year.

(*b*) The price on the grain delivered by the Grower shall
45½ be uniform with that paid other growers regardless of any variations in the price received from such sales for the several products of like kind and quality, subject to the differentials applicable, and deductions for the cost of handling.

(*c*) On or before the first day of May of each calendar year (or at a later date if no such action has been taken previously, provided ten or more growers so desire) all the growers tributary to the Elevator Company and signing this or other similar contract with the Elevator Company, who have elected to participate in the pooling of any kind of grain, may choose from among their number a committee of three, to be known as the Local —— Pooling Committee (stating in the blank the kind of grain) hereinafter designated the Local Pooling Committee, which committee shall exercise complete

control over the handling, shipping and selling of all pooled grain, determining the time, quantity and destination of sales, and effecting all necessary contracts and other arrangements for storage, etc., which may be deemed necessary for the efficient marketing of said grain; provided, however, that these provisions do not apply to "joint pools," Method B-2, where the U. S. Association shall be in control. The person designated by the Local Pooling Committee to have charge of the handling of grain that is pooled and the proceeds of the sale of same, shall file a bond with the U. S. Association as trustee for the growers joining in the pools subject to their jurisdiction; the said bonds shall be in such form, and amounts, and with such sureties as required by the U. S. Association, guaranteeing the faithful performance of the duties of the said person so designated. The U. S. Association, on request, shall furnish all necessary plans, contracts, forms, etc., for the proper handling of the pools. The aforesaid Local Pooling Committee, at the option of the majority
46 of said committee, may delegate its powers to the Elevator Company, or other agency, on condition that the grain is marketed through the U. S. Association.

(*d*) The purpose of these provisions is to secure control over the pooling of any kind of grain in the hands of those who pool. If satisfactory arrangements cannot be made with the Elevator Company for handling the pooled grain, then the said Local Pooling Committee, or committees, handling one or more kinds of grain, shall have the privilege of contracting for the storing and handling of the said grain or grains through any other elevator or warehousing company or agency as they may determine, without any regard to any conflicting provisions in this contract; provided the other agency handling the same shall contract for the exclusive marketing of the said grain through the U. S. Association.

In the election of said Local Pooling Committee each of the said growers shall have one, and only one, vote. The period for which said Local Pooling Committee shall be chosen shall be the period which will include all the pools of that kind of grain for that year, or until the successors are elected and qualified. The compensation, if any, of said Local Pooling Committee shall be at the option of the growers so pooling their grain, and shall be paid by them pro rata.

(*e*) The Local Pooling Committee shall have authority to determine when deliveries of grain shall be made. A Grower may express his preference and the Local Pooling Committee will be guided thereby so far as practicable.

(*f*) The Local Pooling Committee shall weigh, classify and grade the grain delivered to the pools by the Grower; credit the Grower therewith; mingle or pool said grain with grain of like kind
47 and grade delivered to the pools by other growers; and, at its discretion, clean, condition, blend or process the pooled grain to increase its value as food or as an article of commerce.

(*g*) The Local Pooling Committee shall furnish the Grower a "delivery ticket," and such other documents as may be required, upon the delivery of his grain, which shall show the classification, grade and weight of the grain delivered, the pool to which it has been committed, and any advance payment made upon it, and other information that may be required.

(*h*) The Local Pooling Committee shall determine the grade and quality of all grain tendered in accordance with rules and regulations established by the U. S. Association for pooling purposes. Regardless of what grade shall be ultimately placed upon said grain at the terminal markets, the aforesaid grading by the Local Pooling Committee shall control the proportional distribution of the net proceeds from the sale of said grain among the growers participating in any pool.

(*i*) The Local Pooling Committee shall sell through the U. S. Association the grain so pooled, at such times, in such quantities, and for such deliveries, as the Local Pooling Committee shall deem advantageous, and at the best prices obtainable through the U. S. Association under market and transportation conditions, together with grain of like classification delivered to the pool by other growers who have signed this or a similar contract, and pay over the net amount realized therefrom as payment in full to the growers, according to the value of the grain delivered by each of them, due debit and credit being given for all deductions for cost of handling, differentials and adjustments made by the Local Pooling Committee.

48 (*j*) In order to compensate properly the holder of delayed shipments, reasonable carrying charges on different kinds and grades of grain may be fixed from time to time by the Local Pooling Committee, to be credited to growers selling on the pooling basis.

(*k*) The Local Pooling Committee may transfer pooled grain from the local elevator to terminal or other elevators for storage, or other purposes.

(*l*) The Local Pooling Committee is authorized to exercise, without limitation, all the rights of ownership over the grain covered by this contract; to mortgage, pledge or hypothecate in its name, on its own account, all such grain, or evidences of the ownership or control of said grain, including bills of lading, warehouse receipts, etc. The Local Pooling Committee shall distribute said funds pro rata among the growers participating in the pool, or it may use part thereof for meeting expenses in the handling of the pooled grain.

(*m*) Any deductions or loss occasioned by the delivery on the part of the Grower of grain of inferior grade or condition, shall be charged against the Grower, and deducted accordingly from the proceeds going to the said Grower.

(*n*) Losses occurring in the handling, storing, shipping or marketing of pooled grain, not covered by paragraph (*m*), shall be

charged against the pool and not against the individual Grower delivering the grain directly affected thereby.

(*o*) The Local Pooling Committee shall make as substantial an advance payment on the grain committed to the pool as, in its discretion, market and financial conditions permit, and as soon as practicable after its delivery.

(*p*) The proceeds from the sale of grain shall be paid from
49 time to time, the final settlement being made within a reasonable time after the proceeds from the sale of all the grain in the pool have been received, and the deductions for costs of handling shall be determined.

B-2. Joint Pool.—When a Local Pooling Committee has been created, as above described, it shall be authorized to elect whether the grain delivered under this contract—that may be pooled with the grain of other growers locally—shall be pooled jointly with grain of like grade and variety of the growers in one or more other companies. In case the grower individually indicates his election to pool jointly (as provided in Section 23), or in case the local pooling committee elects the joint pool, then the undersigned grower hereby agrees that all of his grain so pooled shall automatically become committed for sale under the joint pooling method on the terms and conditions above specified as to the local pool except that the U. S. Association shall have the same control as the pooling committee does over the local pool, and shall have the grain sold in accordance with the provisions covering joint pools contained in the contract between the elevator company and the U. S. Association.

B-3. Partial Grain Pool.—The Grower may elect, by an appropriate entry at the time of execution hereof in Section 23, or at any subsequent time on an election blank to be provided by the U. S. Association for that purpose, to pool one-third of his grain therein. The term of such pool shall be from the date of such election to the termination of this contract.

The grain so pooled shall be under the control and management of the U. S. Association, which shall return to the growers joining in the said pool the total proceeds from the sale of the same less handling costs, as is provided for Joint Pools. The U. S.
50 Association may make such deductions and such advance payments as are provided for other methods of operation under this contract.

Inasmuch as the failure or refusal of the Grower to deliver to and market and sell through, the Elevator Company will impair its efficiency and the obligation of contracts to which it is a party, will increase its expense, and liability to damage, will hinder the collection of average prices on grain, to the detriment and injury of the other growers participating in the said pool, all of which items it is impracticable and extremely difficult to fix with precision; therefore, if the Grower shall fail or refuse to market or to sell through the Elevator Company any grain covered by this agreement, then

the grower agrees to pay to the Elevator Company, and the Elevator Company agrees to accept, the following sums per bushel: wheat, 10c; rye, 10c; flax, 20c; all other grain, 6c; for all grain covered by this contract which is sold, marketed or withheld by or for the Grower, other than in accordance with the terms hereof, as liquidated damages for the breach of this contract; all parties agreeing that this contract is one of a series dependent for its value upon the adherence of each and all of the contracting parties to each and all of the said contracts. The above agreed items are predicated upon average prices and market conditions for a period of years.

None of the aforesaid payments are to be construed to be a penalty or forfeiture but as stipulated liquidated damages which are hereby agreed to as reasonably representing throughout the period covered by this contract what the Elevator Company and the members thereof will suffer by reason of such refusal or default.

In the event that it shall be necessary to enforce by judicial proceedings this contract as to grain pooled under Method B, the
51 Elevator Company shall bring the action for the benefit of all growers who shall have committed their grain for handling under said method, and any damages recovered thereby shall be the property of said growers.

The Grower hereby elects to market his grain covered by this contract as indicated in Section 23, in accordance with Method B, during the period ending June 30, 1927, or the unexpired portion thereof. This election shall continue from year to year after said date, until revoked by written notice to the Elevator Company, which shall be given within sixty days, and not less than forty-five days, prior to the close of the contract year when the Grower desires his election to terminate.

The Grower reserves the right to make a similar election in the future on other grains if he so desires.

This contract to sell, described as Method B, whereby the Grower may pool his grain for sale, is severable and distinct from the provisions contained in Method A, is dependent upon the special consideration of the receipt of average prices from the sale of grain in the pool; and the validity and binding effect of the provisions contained in this Section (14) shall in nowise be dependent upon, or related to, the provisions contained in Section 13 of this document.

All the provisions of this contract, save those contained in Section 13, shall apply with full force and effect to the sales of grain governed by this section, entitled Method B.

Section 15. In the event that any one or more of the foregoing methods, which may be elected by the Grower, shall for any reason become inoperative, or be held to be illegal by a court of competent jurisdiction from which no appeal can be, or is taken, then, and in that case, the Grower shall have the option of electing one
2 of the other methods named.

Section 16. The Elevator Company, for the sake of uniformity and in order to protect the Grower against the misuse of grain committed to it for sale under any of the methods described herein, and against the improper use of funds owing the Grower as the result of any pools established thereunder, agrees to be governed by and to use such receipts and accounting forms as may be prescribed and recommended by the U. S. Association, and that with respect to such grain to report to and accept accounting supervision by, the said U. S. Association.

The Elevator Company hereby agrees that all persons responsible for the custody of grain covered by this contract, or handling money derived therefrom, shall be adequately bonded, and that failing to require such bonds, the officers of the Elevator Company shall be personally liable for any default.

Section 17. Deduction for the Cost of Handling.—On all grain governed by this contract, the Elevator Company shall be authorized to deduct from the proceeds of the sale of said grain the following:

(*a*) The amount charged by the U. S. Association for the handling of said grain, in accordance with the contract between the U. S. Association and the Elevator Company, copy of which is attached hereto; and

(*b*) Such reasonable charges as may be established by the Elevator Company for handling, weighing, cleaning, storing or performing such other services in connection with the said grain as the Grower may request, or as may be authorized by the terms of this contract.

Section 18. It is mutually understood and agreed that the services rendered by the U. S. Association and all subsidiary com-
53 panies are to be rendered to the Grower at cost; that the deductions for the cost of handling made from the proceeds of the sale of grain are payments on account; and that at stated periods the operating expenses will be determined, and any excess may be returned pro rata to the Grower, or invested in facilities for the more efficient marketing of the grain. Annual reports of the said receipts and expenditures shall be made, and copy of same shall be furnished each contracting Elevator Company. Deduction certificates, or other evidences of the same, shall be distributed among the growers in accordance with the provisions contained in the contract between the Elevator Company and the U. S. Association, copy of which is attached hereto.

Section 19. On grain purchased or handled on the basis of a price to be determined upon the net resale value thereof, less deductions for the cost of handling, the Elevator Company, regardless of who holds title, shall be liable for any loss or damage in the handling and storing of said grain, which is due to the negligence of the said company, but not otherwise.

It shall be the duty of the Elevator Company to keep fully insured all grain held in storage.

Section 20. It is mutually understood and agreed that the U. S. Association has a special property interest in the enforcement of this contract and may bring action thereon in its own name, in the name of the Elevator Company, or in the name of the Grower as the occasion may warrant.

Section 21. The Grower shall be permitted to market only that grain, under the provisions of this contract, which he himself, as land owner or tenant, has raised, or to which he is entitled from land which he may own and rent on the basis of a share of the
54 crops raised thereon.

Section 22. If the standard form of contract between the U. S. Association and the Elevator Company, referred to herein, shall be changed as to administrative details or methods of transacting business, said change shall be deemed made in the form of said contract attached hereto, and this contract amended accordingly.

Section 23. Part 1. Pooling Method.—

The Grower elects to market in accordance with B-1 known as the Local Pool the following grain covered by this contract: ——.

The Grower elects to market in accordance with B-2 known as the Joint Pool the following grain covered by this contract: ——.

The Grower elects to market in accordance with B-3 known as partial Grain Pool the following grain covered by this contract: ——.

Part 2. Individual Sales Method.—

The Grower elects to market in accordance with Method A known as the Individual Sales Method the balance of the grain covered by this contract which is not listed under Part 1 of this section.

Section 24. The signature of the Grower to this instrument shall be considered an application for membership in the U. S. Association, with which the Elevator Company is affiliated. The said Grower agrees to comply with all the requirements as to membership, subscribes and agrees to the Certificate of Incorporation and By-laws of the U. S. Association, the receipt of a copy of which is hereby acknowledged by the Grower; and the Grower further authorizes the use of any or all of the $10.00 initiation and
55 membership fee, in hand, paid to the U. S. Association, to be used for organization, and other expenses incidental to the completion of the organization of the U. S. Association, the creation of and ownership of securities in subsidiary and affiliated companies and other agencies, the securing of memberships, the acquisition of terminal warehouse facilities and for all other purposes authorized and deemed necessary by the Board of Directors of the U. S. Association for the immediate handling and marketing of grain and for the efficient organization of the grain marketing machinery contemplated in this agreement.

Section 25. No party, his agent, or other representative, has the right to vary the terms of this written instrument; and it is ex-

pressly agreed that no oral changes or modifications of the same have been made.

In witness whereof, the parties hereto, after a full reading and consideration of the terms hereof, have executed this contract on the day and year first above written.

Sample copy.

—— ——,
(Signature of Elevator Company or Local Grain Growers' Association.)
By —— ——,
(*President,*) *Party of the First Part.*

—— ——,
(Signature of the Grower.)
(*Party of the Second Part.*)

Post Office ——.

Witness:
—— ——.

Witness:
—— ——.

What acreage (1921) ——.
Corn acreage (1921) ——.
Oats acreage (1921) ——.

56 The U. S. Grain Growers, Inc., hereby acknowledges receipt of the $10.00 initiation and membership fee from the above named applicant at the place and on the date last above written, and hereby admits the said Grower to membership, and approves the foregoing contract, and accepts and agrees to all obligations therein stated. If, for any reason, the said U. S. Association is not engaged in the actual sale of grain within two years from the date hereof, then the portion of the said $10.00 which is not expended shall be returned to the said Grower who executed the foregoing application for membership.

U. S. GRAIN GROWERS, INC.,
By —— ——,
Agent.

Elevator Contract.

(Revised Form.)

This Agreement made and entered into this — day of —— 19—, between the U. S. Grain Growers, Inc., a non-stock, non-profit corporation duly organized and existing under the laws of the State of Delaware (hereinafter referred to as the U. S. Association), party of the first part, and the —— ——, a corporation (or) association, duly organized and existing under the laws of —— (hereinafter referred to as the Elevator Company, unless otherwise specifically indicated), party of the second part, Witnesseth:

In consideration of the mutual obligations of the respective parties hereto, of similar obligations between other elevator companies and the U. S. Association, of the expenses incurred and to be incurred by the Elevator Company in providing local facilities for weighing, grading, storing, handling, processing and shipping grain; of the undertaking on the part of the U. S. Association to provide
57 competent statistical, financial, and other expert assistants, to establish crop and market news gathering agencies, and to acquire the use of marketing facilities for the purpose of providing an efficient co-operative marketing system for grain for the purpose of providing the producers with better credit and storage facilities which will tend to make possible a more even distribution of grain throughout the year, thereby tending to stabilize prices; and in order to reduce waste in handling, to encourage a more efficient production, to reduce transportation costs by more direct shipments from points of origin to centers of consumption, to make less frequent and violent fluctuations in prices due to speculation, and to reduce the excessive costs occasioned by the present wasteful, uneconomic system of marketing the grain crops of the United States.

Now, therefore, said parties agree as follows:

Section 1. The Elevator Company agrees to market through the U. S. Association all the grain committed to it for sale or shipment by members of the U. S. Association (hereinafter called the Growers) under the terms of a contract between the said growers and the Elevator Company (hereinafter referred to as the Growers' Contracts).

Sec. 2. The U. S. Association agrees to endeavor to sell said grain directly, or otherwise, to millers, manufacturers, exporters, or others within or without the United States at the best prices obtainable by it under market conditions, in accordance with the terms of this contract.

Sec. 3. Any grain from growers covered by this contract that is in possession of the Elevator Company and unsold upon the effective date hereof may be committed for sale under this contract.

58 Sec. 4. The U. S. Association shall make rules and regulations for standardizing the manner of keeping warehouse and elevator records and accounts and for making reports required by the U. S. Association; and the Elevator Company shall observe and obey all such rules and regulations and shall permit the examination or auditing of said records, accounts, and reports by the U. S. Association.

Sec. 5. The Elevator Company agrees to make reasonable requests of growers for such crop and statistical data as the U. S. Association may desire, and to transmit the same promptly to the said U. S. Association, using such forms for that purpose as may be provided by the said U. S. Association; and the U. S. Association, upon reasonable request therefor, shall furnish the Elevator Company for the use of the Grower, market news and other information

in its possession concerning the values and market conditions of grains and related products in this and other countries.

Sec. 6. The U. S. Association may make rules and regulations and provide inspectors and weighers to standardize the methods of weighing, handling, storing, and shipping of grain, subject to this contract; and the Elevator Company agrees to observe and perform any such reasonable rules and regulations as may be prescribed by the U. S. Association not in conflict with state and federal rules, regulations and statutes.

Sec. 7. The Elevator Company shall report to the U. S. Association any lien or liens upon the grain covered by this contract, and the U. S. Association may, within its discretion, pay off all or any part of such lien or liens and deduct such payments and any costs connected therewith from the proceeds of the sale of such grain. The Elevator Company shall warrant the title to all grain committed to the U. S. Association for sale, except as to any incum-
59 brances reported to the Elevator Company in writing prior to the time of shipment.

Sec. 8. Upon that grain which is committed to the Elevator Company to be sold on the basis of a price to be determined from the net resale value thereof, less deductions for the cost of handling, the U. S. Association, within its discretion, may make advance payments as market and financial conditions warrant; provided, the Elevator Company shall fully protect the U. S. Association against losses thereby.

Sec. 9. It is expressly agreed and understood that all debts of the U. S. Association shall be incurred in its own name and without responsibility therefor on the part of the Elevator Company, except when specific authority or approval of the same in writing shall have been given by the Elevator Company.

Sec. 10. The U. S. Association is exempted from liability for losses incurred in marketing and selling grain covered by this contract that are not due to its own negligence.

The Elevator Company shall be responsible for and charged with allowances, deductions or losses made or sustained by the U. S. Association arising from the negligence of the Elevator Company.

Sec. 11. Joint Pools.—In consideration of the mutual obligations of the parties hereto, that the Elevator Company shall furnish the necessary facilities for local handling and shall sell exclusively through the U. S. Association the grain received from members of the U. S. Association, and that the U. S. Association shall undertake to supervise the joint pooling of grain as defined in the Growers' Contracts, and shall undertake to provide the facilities which may be reasonably necessary for the same, it is hereby agreed between said parties as follows:

60 (*a*) The Local Pooling Committee, as defined in the Growers' Contracts, or other duly authorized agency, shall

receive, weigh, process, warehouse, and ship all grain committed to a joint pool by members of the U. S. Association, subject to orders of the U. S. Association which shall be observed and performed insofar as the facilities available reasonably permit. The U. S. Association shall classify all pooled grain by variety, quality, grade, or any other commercial standard and mingle or pool said grain with grain of like classification committed to the pool by others participating therein.

(*b*) The U. S. Association may order the transfer of said grain to any elevator and direct the manner in which it is handled therein.

(*c*) The U. S. Association shall undertake to sell said grain, together with grain of like classification and grade committed to the pool by others, at its own discretion in respect of time, conditions and terms, at the best prices obtainable by it under market conditions, collect the proceeds, and shall pay over the net amount received therefrom, as payment in full, to the authorized representatives of those participating in the pool, according to the value of the grain contributed by each of them, after making deductions for the cost of handling and such other charges against said grain as are authorized by this contract, and also making such credits as may be due.

(*d*) The Growers under contract with the Elevator Company under the Growers' Contracts, participating in a joint pool, agree that their grain shall be so mingled and that the net returns therefrom, less all costs of handling, advances and charges, shall be credited and paid to them on a proportional basis, considering all differentials and adjustments, out of the receipts from the sale of all grain of like classification.

(*e*) The pool shall be for a crop year, and payment shall
61 be made from time to time, as rapidly as practicable, within the discretion of the U. S. Association, in due proportion until the accounts of the pool are fully settled.

(*f*) The U. S. Association may borrow money in its name on the grain through drafts, acceptances, notes or otherwise, on any warehouse receipt or bill of lading, upon any accounts for the sale of the grain or on any commercial paper delivered therefor.

(*g*) Losses due to failure of customers or banks and losses occurring in the handling, storing, shipping or marketing of pooled grain shall be charged against the pool and not against the individual Grower or Local Pooling Committee or other agency delivering the grain directly affected thereby, provided the said loss is not due to the negligence of the said parties delivering the grain.

The foregoing agreement as to the handling of joint pools is severable and distinct from the balance of this contract; and the terms and conditions stated elsewhere in this agreement do not depend upon any of the provisions contained in this section.

Section 12. Deductions for the Cost of Handling.—The proceeds from all sales of grain made by the U. S. Association shall be paid by the purchasers thereof to the said U. S. Association, which proceeds shall be blended into one general fund; and the U. S. Association shall deduct from said proceeds such uniform amounts or percentages as shall be deemed necessary from time to time by the duly constituted officers or representatives of the U. S. Association in order to meet all expenses properly chargeable to the handling of such grain; and also certain other deductions shall be made in order to provide special funds for carrying out the purposes of the U. S. Association. The deductions stated in the preceding sen-
tence shall be described in this and all related contracts as
62 deductions for the cost of handling. The net proceeds from
said sales above advances which have been made by a properly constituted authority shall be paid to those entitled to the same in accordance with the usual customs of the trade in handling such transactions.

The special funds mentioned in the preceding paragraph shall include those deemed necessary by the board of directors of the U. S. Association for the acquisition by purchase, lease or otherwise, of the control of property to be used by the said association or affiliated organizations, for the retirement of obligations incurred in the purchase of such property or in the operation of the business of the said association; for any debt due and unpaid from the grower to the U. S. Association, and whenever otherwise specifically authorized in writing by the grower; for the creation of reserves for such retirements, for renewals; and for any other expenditures which the said U. S. Association, its officers or agents, are authorized to incur.

So far as practicable all capital expenditures and interest charges on investments in marketing facilities shall be incurred by self-sustaining subsidiary, or affiliated organizations, and appropriate charges shall be levied against the grain using the facilities furnished by such organizations. All operating and capital expenditures, which are lawfully incurred in accordance with the powers and duties of the U. S. Association, shall be prorated fairly and justly in accordance with the judgment of the officers of the U. S. Association against the grain necessitating such expenditures; provided, however, that if the grain is sold on a grain exchange, and no other service of a substantial character is rendered by the U. S. Association, the total expendi-
tures which shall be considered chargeable against said grain
63 shall in no case exceed one per cent of its value, unless the
standard charge for similar service shall be more than one per cent, in which case said total charges by the U. S. Association shall not exceed such standard charge. On other grain where facilities requiring capital investment are used, the maximum deduction for any one year from the proceeds of all sales of grain to be made for capital expenditures, interest charges, etc. (aside from ordinary operating, including overhead expenses) in order to acquire the ownership or control over marketing facilities shall in no case exceed one per cent of the value of the grain so handled by the U. S. Association. The distinction, in accounting, between capital and operating

come and expenditures, shall be in accordance, so far as practicable, with the rules adopted for common carriers by the Interstate Commerce Commission.

The amount of deductions for the cost of handling, as above specified, shall be estimated by the Board of Directors of the U. S. Association, and shall be so established as to yield as nearly as may be a sum of money equivalent to the operating and capital expenditures and reserves, and such other expenses as may be reasonably estimated as essential to be incurred by the U. S. Association, and its subsidiary organizations, for the ensuing year. In case a sum in excess of such requirement shall be collected during any fiscal year, it shall be set aside, or invested to meet the obligations or needs of the future, for the use and benefit of the Growers; unless the same shall be relatively large and substantial, in which case the U. S. Association may distribute all, or a part of the same, to its members in proportion to the grain sold through the U. S. Association, at such time as it shall determine. And the Elevator Company, for valuable consideration, receipt of which is hereby acknowledged, waives all right, title and interest in and to any portion of such funds.

61 It is understood and agreed that this contract and the contract between the Grower and the Elevator Company provide fully and adequately for the equitable distribution of the proceeds from the sale of grain by the U. S. Association or its subsidiary organizations, and that any charges and deductions hereunder revert back to the benefit of the Grower through his membership in the U. S. Association.

The U. S. Association shall issue certificates to the Elevator Company indicating the proportionate amounts of the deductions for capital expenditures and of the excess from other deductions attributable to grain received therefrom; and the Elevator Company shall issue proportionate certificates based thereon to the member of the U. S. Association. Such certificates shall indicate a pro rata interest in such deductions, distributable only in the form, at a time and in the manner determined by the U. S. Association. The said certificates shall be assignable freely by endorsement; but shall not be deemed as obligations of the U. S. Association with definite or other maturity, and shall not bear interest; and they shall not represent any obligations or rights, other than a proportionate ownership in certain assets held by the U. S. Association, which shall not be separable or subject to distribution during the life of the U. S. Association, except at the option of the duly constituted Board of Directors of the U. S. Association.

Section 13. Term of Contract.—This contract shall be in force from its execution to June 30, 1927, and thereafter shall continue in full force and effect as to each of the parties hereto from year to year, until the same shall have been terminated by either party in accordance with the following terms and conditions:

5 (*a*) Notice in writing of said termination must be given by such party desiring the same, to the other party at least forty-

five (45) days, and not more than sixty (60) days, prior to the close of the contract year, at the end of which it is sought to terminate the contract.

(*b*) The party desiring to make such termination must, prior to the effective date of the same, pay any indebtedness then due the other party.

(*c*) If the foregoing conditions are fully complied with, this contract shall thereupon be terminated on the date named. Provided, however, that this shall not affect any uncompleted sales or transactions between the parties hereto, nor release either from any indebtedness then unpaid or hereafter accruing under this contract, nor relieve the Elevator Company from its obligation to sell to or through the U. S. Association, nor the U. S. Association from its obligation to market and sell, as the agent of the Elevator Company, all of the grain committed to it or purchased by it from members of the U. S. Association that was grown during the preceding season or seasons subsequent to the execution of this contract.

Section 14. On all grain which has been delivered to and is under the control of the Elevator Company, and covered by this contract, which the Elevator Company fails to market through the U. S. Association in accordance with the terms and conditions herein stated, the Elevator Company agrees to pay to the U. S. Association and said U. S. Association agrees to accept the following sums per bushel as liquidated damages: wheat, 5c; rye, 5c; flax, 10c; for all other grains, 3c.

Section 15. It is mutually understood and agreed that the U. S. Association has a special interest in the enforcements of contracts between its members and the Elevator Company and may bring action thereon in its own name, in the name of the Elevator Company, or in the name of the Grower, as the occasion may justify.

66

Section 16. If this contract is executed by the Elevator Company as distinguished from a Local Grain Growers Association, the said Elevator Company represents itself as incorporated under the Co-operative Law of the state where operating and as paying patronage dividends.

In witness whereof, the parties to this agreement have hereunto set their hands and seals, the day year first above written.

U. S. GRAIN GROWERS, INC.

By —— ——,
President, Party of the First Part.

By —— ——,
President, Party of the Second Part.

Postoffice address: ——.

(Endorsed:) Filed Oct. 25, 1921. John H. R. Jamar, clerk.

67 [Endorsed:] 2400. U. S. District Court, Northern District of Illinois. John Hill, Jr., et al., Complainants, vs. Henry C. Wallace, Secretary of Agriculture, et al., Defendants. Bill. Robbins, Towley & Wild, Solicitors for Complainants.

68 And afterwards, to wit, on the 25th day of October, 1921, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

69 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Tuesday, October 25, A. D. 1921.

Present: Kenesaw M. Landis, District Judge.

JOHN HILL, JR., et al., Complainants,

vs.

HENRY C. WALLACE, Secretary of Agriculture, et al., Defendants.

Order.

Upon filing the bill of complaint herein and upon motion of the plaintiffs' counsel,

It is ordered that the defendants show cause before this court at 10 o'clock a. m., on the 7th day of November, 1921, why a temporary injunction should not issue as prayed by said bill.

It is further ordered that until the hearing and decision of said motion, said Henry C. Wallace, Secretary of Agriculture of the United States, refrain from designating the Board of Trade of the City of Chicago as a contract market under the Future Trading Act, and from doing any other acts to compel said Board of Trade to comply with the provisions of said Act, and said Board of Trade of the City of Chicago and said Joseph P. Griffin, James J. Fones, Theodore E. Cunningham, Louis C. Brosseau, John J. Bagley, James V. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan H. Clement, Fred S. Lewis, James C. Murray and John R.
70 Mauff refrain from applying to said Secretary of Agriculture for, or accepting from said Secretary of Agriculture, the designation of said Board of Trade as a contract market under said Future Trading Act, and from admitting to membership in said Board any representatives of any co-operative associations of producers, and from doing any other acts to comply with any of the provisions of said Act.

Enter.

KENESAW M. LANDIS,
Judge.

70½ And on, to wit, the 1st day of November, 1921, came the Defendants by their attorneys and filed in the Clerk's office of said Court a certain Appearance in words and figures following, to wit:

71 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 2400.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Appearance.

We hereby enter the appearance of Board of Trade of the City of Chicago, Joseph P. Griffin, president and a director of said Board of Trade, and James J. Fones and Theodore E. Cunningham, vice-presidents and directors of said Board of Trade, and Louis C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis and James C. Murray, directors of said Board of Trade, and John R. Mauff, secretary of said Board of Trade, as defendants and of ourselves as counsel for said defendants in the above entitled cause.

TAYLOR, MILLER, DICKINSON & PLAMONDON,
Solicitors for said Defendants.

GEORGE D. SMITH,
Counsel.

(Endorsed:) Filed Nov. 1, 1921. John H. R. Jamar, Clerk.

71½ And on, to wit, the 1st day of November, 1921, came the certain defendants by their attorneys and filed in the Clerk's office of said Court a certain Motion to Dismiss in words and figures following, to wit:

72 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 2400.

JOHN HILL, JR., et al., Complainants,

vs.

HENRY C. WALLACE, Secretary of Agriculture, et al., Defendants.

Motion to Dismiss Bill of Complaint.

Now come Board of Trade of the City of Chicago, Joseph P. Griffin, president and a director of said Board of Trade, and James J. Fones and Theodore E. Cunningham, vice-presidents and directors of said Board of Trade, and Louis C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis and James C. Murray, directors of said Board of Trade, and John R. Mauff, secretary of said Board of Trade, comprising a part of the defendants in the above entitled cause, by Taylor, Miller, Dickinson & Plamondon, their attorneys, and move the court to dismiss the bill of complaint in said cause for that:

Said bill of complaint is without equity on its face and does not state facts sufficient to constitute a cause of action in a court of equity.

Wherefore defendants pray that their said motion be sustained.

TAYLOR, MILLER, DICKINSON & PLAMONDON,
Solicitors for Board of Trade of the City of Chicago.

GEORGE D. SMITH,
Counsel.

(Endorsed:) Filed Nov. 1, 1921. John H. R. Jamar, Clerk.

72½ And on, to wit, the 7th day of November, 1921 came the Defendant by its attorney and filed in the Clerk's office of said Court a certain Motion to Dismiss in words and figures following, to wit:

73 In the District Court of the United States, Northern District of Illinois, Eastern Division.

D. C. Equity. No. 2400.

JOHN HILL, JR., et al., Complainants,

v.

HENRY C. WALLACE, Secretary of Agriculture, et al., Defendants.

To the Honorable the Judges of said Court in Chancery Sitting:

Comes now the defendant, Henry C. Wallace, Secretary of Agriculture of the United States, by Charles F. Clyne, United States Attorney for the Northern District of Illinois, appearing specially for the sole purpose of this motion and for no other purpose, and moves the Court to dismiss this suit as to him for the following reasons:

1. That said defendant, at the time of the commencement of this suit, was and now is a resident of the District of Columbia.

2. That said defendant is not a resident of the Northern District of Illinois.

3. That said defendant has not been served with process in said District or at all.

4. That the Court has no jurisdiction over said defendant.

CHARLES F. CLYNE,
United States Attorney.
Attorney for Defendant Henry C. Wallace.

FRED LEES,
Assistant to the Solicitor,
U. S. Department of Agriculture,
Of Counsel.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

74 [Endorsed:] Form No. 680. No. —. In the District Court of the United States for the Northern District of Illinois, Eastern Division. John Hill, Jr., et al., Complainants, vs. Henry C. Wallace, Secretary of Agriculture, et al., Defendants. Special appearance and motion to dismiss. Filed —— —, 19—. —— ——, Clerk, by —— ——, Deputy. Charles F. Clyne, U. S. Attorney.

75 And on, to wit, the 7th day of November, 1921, came the Defendants by U. S. attorney and filed in the Clerk's office of said Court a certain Motion to Dismiss in words and figures following, to wit:

76 In the District Court of the United States, Northern District of Illinois, Eastern Division.

D. C. Equity. No. 2400.

JOHN HILL, JR., et al., Complainants,

v.

HENRY C. WALLACE, Secretary of Agriculture, et al., Defendants.

To the Honorable the Judges of said Court in Chancery Sitting:

Comes now the defendants, Charles F. Clyne, United States District Attorney for the Northern District of Illinois, and John C. Cannon, Collector of Internal Revenue for the First District of Illinois, by Charles F. Clyne, United States Attorney for the Northern District of Illinois, and move the court to dismiss the bill of complaint heretofore filed in the above entitled cause upon the following grounds, to wit:

1. That this is a suit for the purpose of restraining the assessment and collection of a tax, contrary to Section 3224 of the Revised Statutes of the United States.

2. That the bill seeks to restrain the enforcement of a criminal statute, to wit, the Act of Congress approved August 24, 1911 (Public No. 66—67th Congress), known as The Future Trading Act, without showing that the complainants will suffer irreparable injury by its enforcement.

3. That the bill seeks to enjoin the enforcement of a valid Act of Congress, to wit, the Act approved August 24, 1911 (Public No. 66-67th Congress), known as The Future Trading Act.

CHARLES F. CLYNE,
United States Attorney, Attorney for Himself and Defendants and John C. Cannon.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

77 [Endorsed:] Form No. 680. No. —. In the District Court of the United States for the Northern District of Illinois, Eastern Division. John Hill, Jr., et al., Complainants, vs. Henry C. Wallace, Secretary of Agriculture, et al., Defendants. Motion to Dismiss. Filed ——— —, 19–. ——— ———, clerk, by ——— ———, Deputy. Charles F. Clyne, U. S. Attorney.

78 And afterwards, to wit, on the seventh day of November, 1921, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

79 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Monday, November 7, A. D. 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

This cause came on to be heard at this term and was argued by counsel, thereupon, upon consideration thereof, now

It is ordered, adjudged and decreed that the motion for a temporary injunction be denied, and that the Bill be dismissed as to all the defendants for want of equity.

Enter.

KENESAW M. LANDIS,
Judge.

79½ And on, to wit, the 7th day of November, 1921, came the Complainants by their attorneys and filed in the Clerk's office of said Court a certain Petition for Allowance of Appeal in words and figures following, to wit:

80 In the District Court of the United States, Northern District of Illinois, Eastern Division.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Petition for Allowance of Appeal.

John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Charles E. Gifford, Alfred V. Booth, Edward L. Glaser and Alonzo B. Lord, the complainants, conceiving themselves to be aggrieved by the decree of this court entered on the 7th day of November, 1921, dismissing the above entitled suit, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error this day filed herein and they pray that this appeal may be allowed and that a transcript of the record and all proceedings herein be forthwith transmitted to said court, and that the temporary restraining order issued herein be continued in force for the purpose of enabling said complainants

o apply to the Supreme Court of the United States for the further ontinuance of said restraining order.

JOHN HILL, Jr.,
REUBEN G. CHANDLER,
ADOLPH KEMPNER,
EMIL W. WAGNER,
CHARLES E. GIFFORD,
ALFRED V. BOOTH,
EDWARD L. GLASER,
ALONZO B. LORD,
By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

0½ And on, to wit, the 7th day of November, 1921, came the Complainants by their attorneys and filed in the Clerk's office f said Court certain Assignments of Error in words and figures folowing, to wit:

1 In the District Court of the United States, Northern District of Illinois, Eastern Division.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

Assignments of Error.

Now come the complainants, John Hill Jr., Reuben G. Chandr, Adolph Kempner, Emil W. Wagner, Charles E. Gifford, Alfred . Booth, Edward L. Glaser, and Alonzo B. Lord, and file the folowing assignments of error upon which they rely for grounds for versal on the appeal in the above entitled cause:

1. That the District Court erred in dismissing said action for want equity.

2. That the District Court erred in not entering a decree pursuant the prayer of said bill.

3. That the District Court erred in not adjudging and decreeing at said Future Trading Act was void in toto because it violates the nstitution of the United States.

4. That the District Court erred in not adjudging Section 3 of id Future Trading Act contrary to the Constitution of the United ates.

5. That the District Court erred in not decreeing that Section 4 said Future Trading Act was unconstitutional and void insofar as it attempts to impose a tax of 20 cents on every bushel
2 upon each contract of sale of grain for future delivery made by or through members of a board of trade which has not

been designated by the Secretary of Agriculture as a contract market.

6. That the District Court erred in not adjudging and decreeing that Section 5 of said Future Trading Act and each of the subclauses (A), (B), (C), (D), (E), and (F) thereof were void because they violate the Constitution of the United States.

7. That the District Court erred in not adjudging and decreeing that Section 6 and sub-clauses (A) and (B) thereof, of said Act were void because they violate the Constitution of the United States.

8. That the District Court erred in not adjudging and decreeing that Section 9 of said Future Trading Act was void because it violates the Constitution of the United States.

9. That the District Court erred in not adjudging and decreeing that Section 10 of said Future Trading Act was void because it violates the Constitution of the United States.

10. That the District Court erred in not adjudging said Act void for the reason that it attempts to deprive complainants and other members of said Board of Trade and said Board of Trade of their property without due process of law.

11. That the District Court erred in not adjudging said Act void in that it seeks and attempts to regulate commerce that is not interstate but purely intra-state in character.

12. That the District Court erred in not adjudging said Act void in that the taxes imposed by said Act are not a *a* legitimate
83 exercise by Congress of its power to tax, but is a mere subterfuge, adopted for the purpose of regulating intra-state commerce.

13. That the District Court erred in not adjudging said Act void in that it authorizes unreasonable searches by the Secretary of Agriculture respecting the books and papers of members of the exchanges.

14. That the District Court erred in not adjudging said Act void in that it is class legislation and deprives members of exchanges of the right to contract for the purchase of grain for future delivery as others may.

JOHN HILL, JR.,
REUBEN G. CHANDLER,
ADOLPH KEMPNER,
EMIL W. WAGNER,
CHARLES E. GIFFORD,
ALFRED V. BOOTH,
EDWARD L. GLASER,
ALONZO B. LORD,
By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

83½ And afterwards, to wit, on the 7th day of November, 1921, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

84 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Monday, November 7, A. D. 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

JOHN HILL, JR., et al., Complainants,

vs.

HENRY C. WALLACE, Secretary of Agriculture, et al., Defendants.

Order.

Now come the complainants, and it appearing to the court that a petition for appeal and assignments of error have been filed herein,

It is ordered that an appeal to the Supreme Court of the United States from the decree entered herein on the 7th day of November, 1921, be and the same is allowed, that for the purpose of enabling said court to decide said appeal a transcript of record herein be forthwith transmitted to said court, and that complainants file their appeal bond in the sum of five hundred ($500) dollars, to be signed by at least two of said complainants and by a surety to be approved by this court, and that the temporary restraining order heretofore issued continue in force until the Supreme Court shall act upon the application of the complainants to that court for a continuance of said order, provided, however, that such application shall be made within 15 days from the date hereof.

Enter.

K. M. L.,
Judge.

84½ And on to-wit: the 7th day of November, 1921, came John Hill, Jr., and Emil W. Wagner, as principals, and Fidelity and Deposit Company of Maryland, as surety, and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to-wit:

85 Know all men by these presents: That we, John Hill, Jr., and Emil W. Wagner as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Henry C. Wallace, Secretary of Agriculture of the United States; David H. Blair, Commissioner of Internal Revenue of the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal

Revenue for the First District of Illinois; Board of Trade of th City of Chicago, Joseph P. Griffin, James J. Fones, Theodore E Cunningham, Louis C. Brosseau, John J. Bagley, James W. McCul loh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L Winters, Charles H. Stone, David H. Lipsey, Allan M. Clemen Fred S. Lewis, James C. Murray, and John R. Mauff, in the full an just sum of Five Hundred ($500) Dollars, to be paid to said Henr C. Wallace, Secretary of Agriculture of the United States; David H Blair, Commissioner of Internal Revenue of the United States Charles F. Clyne, United States District Attorney for the Norther District of Illinois; John C. Cannon, Collector of Internal Revenu for the First District of Illinois; Board of Trade of the City o Chicago, Joseph P. Griffin, James J. Fones, Theodore E. Cun ningham, Louis C. Brosseau, John J. Bagley, James W. McCulloh Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E Hudson, Edward D. McDougal, Edwin A. Doern, Leander L Winters, Charles H. Stone, David H. Lipsey, Allan M. Clemen Fred S. Lewis, James C. Murray, and John R. Mauff, for the pay ment of which, well and truly to be made, we bind ourselves, ou successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of November A. D. 1921.

Whereas, lately, at the November term, A. D. 1921, of the Distric Court of the United States, in a suit pending in said court betwee John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emi W. Wagner, Charles E. Gifford, Alfred V. Booth, Edwar
86 L. Glaser, and Alonzo B. Lord, as complainants, and sai Henry C. Wallace, Secretary of Agriculture; David H. Blair Commissioner of Internal Revenue of the United States; Charles F Clyne, United States District Attorney for the Northern District o Illinois; John C. Cannon, Collector of Internal Revenue for th First District of Illinois; Board of Trade of the City of Chicago Joseph P. Griffin, James J. Fones, Theodore E. Cunningham, Loui C. Brosseau, John J. Bagley, James W. McCulloh, Joseph F. Lamy Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edwar D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis, James C Murray, and John R. Mauff, as defendants, a decree was entered o the seventh day of November, 1921, dismissing said bill for want o equity, and said John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Charles E. Gifford, Alfred V. Booth Edward L. Glaser, and Alonzo B. Lord, have obtained an order o appeal from said court to reverse the decree in the aforesaid sui and a citation directed to the said Henry C. Wallace, Secretary o Agriculture of the United States; David H. Blair, Commissioner o Internal Revenue of the United States; Charles F. Clyne, Unite States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District o Illinois; Board of Trade of the City of Chicago, Joseph P. Griffin James J. Fones, Theodore E. Cunningham, Louis C. Brosseau, John

J. Bagley, James W. McCulloh, Joseph F. Lamy, Kenneth P. Edwards, Joseph Simons, William E. Hudson, Edward D. McDougal, Edwin A. Doern, Leander L. Winters, Charles H. Stone, David H. Lipsey, Allan M. Clement, Fred S. Lewis, James C. Murray, and John R. Mauff, citing and admonishing them to appear in the Supreme Court of the United States within thirty days from the date of said citation. Now the condition of the above obligation is such that if the said John Hill, Jr., Reuben G. Chandler, Adolph Kempner, Emil W. Wagner, Charles E. Gifford, Alfred V. Booth, Edward L. Glaser, and Alonzo B. Lord, shall duly prosecute their bill with effect, and answer all damages and costs if they shall fail to make good their plea; then the above obligation to be void, else to remain in full force and effect.

JOHN HILL, JR. [SEAL.]
EMIL W. WAGNER. [SEAL.]
[SEAL.] FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By ARTHUR G. STANTER,
Agent and Attorney in Fact.

Approved:
TAYLOR.
K. M. L.

O. K.
CHARLES F. CLYNE,
TAYLOR, MILLER, DICKINSON &
PLAMONDON,
For Board of Trade of the City of Chicago.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

87 In the District Court of the United States, Northern District of Illinois, Eastern Division.

D. C. Equity. No. 2400.

John Hill, Jr., et al., Complainants,

vs.

Henry C. Wallace, Secretary of Agriculture, et al., Defendants.

To John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please prepare for the purpose of appeal a certified transcript of the entire record in the above entitled cause.

ROBBINS, TOWNLEY & WILD,
Counsel for Complainants.

Received copy November 7th, 1921.

CHARLES F. CLYNE,
U. S. Attorney, N. D. Illinois.
TAYLOR, MILLER, DICKINSON & PLAMONDON,
GEORGE D. SMITH,
Attys. for Board of Trade of the City of Chicago.

(Endorsed:) Filed Nov. 7, 1921. John H. R. Jamar, Clerk.

88 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled John Hill, Jr. et al. vs. Henry C. Wallace, Secretary of Agriculture, et al., as the same appear from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 8th day of November, A. D. 1921.

[Seal of Dist. Court U. S., Northern Dist. Illinois.]

JOHN H. R. JAMAR,
Clerk.

89 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Henry C. Wallace, Secretary of Agriculture; David H. Blair, Commissioner of Internal Revenue of the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District of Illinois; Board of Trade of the City of Chicago, et al., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein John Hill, Jr., et al. are Complainants, and you are Defendants to show cause, if any there be, why the decree rendered against the said Complainants as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Kenesaw M. Landis Judge of the District Court of the United States, this 7th day of November, in the year of our Lord one thousand nine hundred and 21.

KENESAW M. LANDIS.

Duplicate.

Nov. 8, '21.

Ack. Service for all parties for whom I have appeared.

CHARLES F. CLYNE,
United States Atty.

Received a copy this 8th day of November 1921.
BOARD OF TRADE OF THE CITY OF CHICAGO ET AL.,
By TAYLOR, MILLER, DICKINSON & PLAMONDON.

[Endorsed:] No. 2400. Supreme Court of the United States. John Hill, Jr., et al. vs. Henry C. Wallace, Sec. of Agriculture, et al. Citation to the Supreme Court of the United States. Filed Nov. 8, 1921, at — o'clock M. John H. R. Jamar, Clerk.

90 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Henry C. Wallace, Secretary of Agriculture; David H. Blair, Commissioner of Internal Revenue of the United States; Charles F. Clyne, United States District Attorney for the Northern District of Illinois; John C. Cannon, Collector of Internal Revenue for the First District of Illinois; Board of Trade of the City of Chicago, et al., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein John Hill, Jr., et al. are Complainants, and you are Defendants to show cause, if any there be, why the decree rendered against the said Complainants as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Kenesaw M. Landis Judge of the District Court of the United States, this 7th day of November, in the year of our Lord one thousand nine hundred and 21.

KENESAW M. LANDIS.

[Endorsed:] 616. No. 2400. Supreme Court of the United States. John Hill, Jr., et al. vs. Henry C. Wallace, Sec. of Agriculture, et al. Citation to the Supreme Court of the United States.

On this 16th day of November, in the year of our Lord one thousand nine hundred and 21, personally appeared James L. Fort before me, the subscriber, John P. Cage, a notary public for the District of Columbia, and makes oath that he delivered a true copy of the within citation to David H. Blair, Commissioner of Internal Revenue of the United States, at 5:25 P. M. on November 15th, 1921.

JAS. L. FORT.

Sworn to and subscribed the 16th day of November, A. D. 1921.

[Seal of John P. Cage, Notary Public, District of Columbia.]

JOHN P. CAGE,
Notary Public, District of Columbia.

91 [Endorsed:] File No. 28,571. Supreme Court U. S., October Term, 1921. Term No. 616. John Hill, Jr., et al., App'ts, vs. Henry C. Wallace, Sec'y, &c., et al. Citation and service. Filed Nov. 16, 1921.

Endorsed on cover: File No. 28,571. N. Illinois D. C. U. S. Term No. 616. John Hill, Jr., Reuben G. Chandler, Adolph Kempner, et al., appellants, vs. Henry C. Wallace, Secretary of Agriculture; David H. Blair, Commissioner of Internal Revenue of the United States, et al. Filed November 10th, 1921. File No. 28,571.

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